

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID BEARD, JR.)	
Claimant)	
)	
VS.)	
)	
APAC, INC.)	
Respondent)	Docket No. 1,027,355
)	
AND)	
)	
INDEMNITY INS. CO. OF NORTH AMERICA)	
Insurance Carrier)	

ORDER

Claimant requested review of the May 24, 2006, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

The Administrative Law Judge (ALJ) found that claimant failed to prove by a preponderance of the evidence that he suffered injury arising out of and in the course of his employment with respondent. Accordingly, claimant's request for medical treatment was denied.

The claimant requests that the Board find that claimant's low back injury did arise out of and in the course of his employment. Claimant points out that it is uncontroverted that he gave notice of his injury on the date of the incident and also to the medical providers. Claimant further states that although there was no mention of a back injury in the emergency room records of July 20, 2005, the main focus of the medical personnel was his diagnosis of heat stroke/heat exhaustion. Claimant also notes that he is alleging a work injury occurring on July 20, 2005, and continuing through his last day worked.

Respondent contends that claimant did not meet his burden in proving a low back injury which arose out of and in the course of his employment and requests that the Order of the ALJ be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant worked for respondent, a heavy construction business, working with concrete. On July 20, 2005, he and his coworkers were pouring a roundabout, and he was operating the chute on the back of the concrete truck. He was holding the chute in place as the concrete came out and was moving it around as the truck moved forward. According to claimant, the truck jerked forward, as if a foot slipped off the clutch. When that happened, claimant was jerked with the weight of the chute on him. He felt a sudden onset of low back pain that worked its way up his back. The pain worsened, and he developed a headache.

Claimant continued to work for another 30 minutes. The weather that day was very hot. In addition to his back hurting him, claimant got to the point where he could not see. He testified that he told his supervisor that he could not see and that he had hurt his back. He was given safety glasses and continued working, but he continued to worsen. According to claimant, he again told his supervisor that he could not see, that he had a headache, and that he had hurt his back. Claimant's supervisor did not testify to either confirm or deny claimant's description of their conversations. However, certain medical records were placed into evidence which do not support claimant's contention of having suffered a back injury while working on July 20, 2005, or thereafter.

Claimant was taken to the emergency room on July 20, where he was told that he was suffering from heat exhaustion and was very close to having a heat stroke. The emergency room records indicate he was complaining of not being able to see, other than spots and bright lights in both eyes. He was also weak, nauseous, and sweating. He had a throbbing headache behind the eyes, and his neck was tight. There is no mention in the emergency room records of pain in his back, although claimant testified he made complaints about his back at the emergency room. Claimant contends that the medical providers' only focus was his heat exhaustion, and this is the reason that his back was not examined that day.

Claimant took a day off and then returned to work. Claimant said he was still complaining of back pain, and respondent allowed him to do light duty work when possible. He was seen by the company doctor, Dr. Gerald Dennis, II, on August 2, 2005, as a follow up for his heat exhaustion. Although claimant testified he told Dr. Dennis about his low back pain, there was no mention of it in Dr. Dennis' report. Dr. Dennis returned claimant to full duties.

Claimant continued to work, but because his back pain was worsening, he visited his personal doctor, Dr. Michael Crim, on August 15, 2005. Dr. Crim's medical note of that date states:

Patient comes in today with complaint of low back pain which has been bothering him since Sat. OF NOTE: He works doing concrete work which involves a lot of pulling, bending, lifting, etc. He has had no known injury, just awoke with the pain on Sat. and it has been increasingly bothering him. It does radiate down his right leg. He has noticed some numbness in his right great toe but that has been going on for about two weeks now and the pain has only been present for 3 days.¹

Claimant continues to see Dr. Crim, who is recommending that he see a neurosurgeon. None of Dr. Crim's records indicate that claimant told him about the incident on July 20. However, his medical note of September 6, 2005, mentions that claimant told him about an incident in the winter of 2004 when he fell at work. Claimant wondered if he had done something to his back at that time.

The main focus of the emergency room treatment on July 20 was the vision and headache symptoms which were diagnosed as heat exhaustion. It is understandable that complaints of muscle aches or back pain could go unreported in the records of that visit. It is less understandable, however, why the subsequent medical records continued to omit any mention of back pain and radicular symptoms in the leg and foot. And even Dr. Crim's records, which do contain a history of back pain, do not relate those back symptoms to July 20 or any subsequent incident at work. The ALJ noted that "claimant works in an occupation where back injuries are certainly possible" but that the evidence failed to meet claimant's burden of proving his back problems were caused by a work-related accident or series of accidents.² The Board agrees.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Kenneth J. Hursh dated May 24, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2006.

BOARD MEMBER

c: Patrick C. Smith, Attorney for Claimant
Gary R. Terrill, Attorney for Respondent and its Insurance Carrier

¹ P.H. Trans., Cl. Ex. 1 at 1.

² ALJ Order (May 24, 2006) at 2.